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SERVICE DATE – SEPTEMBER 24, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 234X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN  
WASHINGTON COUNTY, MINN.

Decided: September 23, 2013

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 0.81-mile line of railroad known as the Stillwater Industrial Lead, extending from milepost 4.69 to milepost 5.50 near Stillwater in Washington County, Minn. Notice of the exemption was served and published in the Federal Register on December 4, 2006 (71 Fed. Reg. 70,450). The exemption became effective on January 3, 2007, subject to employee protective conditions and by a decision served on December 29, 2006 (December 2006 decision), to an environmental consultation condition regarding salvage and an historic preservation condition.

The historic preservation condition required UP to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures, within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places (National Register) until completion of the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f. This condition also required UP to report back to what is now the Board's Office of Environmental Analysis (OEA) regarding any consultations with the Minnesota State Historic Preservation Office (SHPO) and any other Section 106 consulting parties, and this condition prohibited UP from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of track and ties) until the Section 106 process had been completed and the Board had removed the condition. In this decision, the Board is removing the historic preservation condition.

In a Supplemental Final Environmental Assessment dated August 14, 2013, OEA states that, since the issuance of the above-mentioned decisions, it has received correspondence from the SHPO. In a January 5, 2009 letter, the SHPO advised OEA of its concerns regarding track removal. The SHPO questioned the stability of the ground underneath the tracks that run above many of the historic components of the South Main Archaeological District (Archaeological

District).<sup>1</sup> The SHPO stated that the use of equipment to remove the tracks could cause damage to the adjacent walls and other elements of the Archaeological District. According to the SHPO, in some areas, erosion had already resulted in loss of soil directly below the tracks and exposed the Archaeological District to damage. The SHPO also explained that the tracks could act as a stabilizing factor and their removal could result in accelerated erosion and site damage, causing significant adverse effects. In a prior letter, the SHPO had stated that any destabilization of this area could create a significant threat to major elements of the Archaeological District. The SHPO requested that OEA consider indirect/cumulative effects of the abandonment on the Archaeological District because the rail corridor was slated for construction of a section of the Loop Trail that was proposed as part of the St. Croix River Crossing Project.

In a December 13, 2012 letter, the SHPO informed OEA that a Memorandum of Agreement (MOA) has been signed between the Minnesota Department of Transportation (MnDOT) and the SHPO for the St. Croix River Crossing Project. The MOA contains commitments associated with protecting archaeological resources that are adjacent to and below the proposed rail abandonment site. Under the stipulations in the MOA, MnDOT has agreed to certain protective commitments regarding salvage. MnDOT also has agreed to prepare, in consultation with the SHPO, a stabilization report identifying measures to protect the Archaeological District, which has been determined to be eligible for listing in the National Register, and to incorporate the recommended stabilization measures into plans for the new Loop Trail proposed for portions of the rail corridor. Following the MOA, OEA notes that in a letter dated January 22, 2013, UP stated that the land underlying the right of way, and the track structure, including all rail and ties that make up the line, was sold intact to the City of Stillwater. By letter of the same date, the City of Stillwater stated that it had no intention of undertaking any salvage operations and that it would not take any action that would adversely affect the stabilization of the tracks or rail bed. OEA reports that, based on assurances by MnDOT and the City of Stillwater, the SHPO has concurred that the proposed abandonment would not adversely affect any historic properties.

OEA has reviewed the available information and, following consultation with the SHPO, MnDOT, the City of Stillwater and the public finds, pursuant to the Section 106 regulations of NHPA, that the proposed abandonment would not adversely affect historic properties listed in or eligible for inclusion in the National Register. Therefore, OEA recommends that the Section 106 condition imposed in the Board's December 2006 decision be removed.<sup>2</sup>

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<sup>1</sup> OEA states that the Archaeological District is a linear area that is composed of above and below ground remains of an extensive milling complex.

<sup>2</sup> The environmental consultation salvage condition is self-executing and requires no formal action by the Board for its removal.

Accordingly, based on OEA's recommendation, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the Section 106 historic preservation condition imposed in the December 2006 decision is removed.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.